



LEGAL AID
SOCIETY OF HAWAI'I



PATERNITY

ESTABLISHING CHILD CUSTODY, VISITATION AND SUPPORT.

Use this brochure if you are not married to the other parent of your child. This brochure provides information on the rights of both parents when they are not married.

IMPORTANT:

Paternity laws differ in every state. Hawai'i has jurisdiction if the child and filing party have lived here for 6 months, or if other circumstances find that Hawai'i can allow for filing to happen here. If you want to file a paternity action in another state, or have received papers from another state, call Legal Aid for the phone numbers of mainland legal service providers. Please visit us on the web: <http://www.legalaidhawaii.org>.



This brochure was created through the AmeriCorps Project Lailima of the Legal Aid Society of Hawai'i



© Copyright September 1999, Legal Aid Society of Hawai'i

All rights reserved. These materials may not be reproduced without the written permission of the Legal Aid Society of Hawai'i. Under no circumstances are persons receiving these brochures to be charged for copies without written permission of the Legal Aid Society of Hawai'i. This is meant to be an informational brochure, and is not intended to take the place of legal counsel. It is not intended to be a complete statement of law nor is it intended to fully describe or evaluate your options. The distribution of this brochure by the Legal Aid Society of Hawai'i does not imply that an attorney-client relationship has been formed. Revised February 2015. F41 Paternity General Info.

I. What is Paternity?

- Paternity legally establishes who the father of a child is. If the parents of a child are not married when the child is born, paternity needs to be established before the father has any legal rights to the child.

a. **Paternity is an issue if:**

- You and the other parent were not married when the child was born.
- The mother of the child was married when the child was born, but her spouse was not the father of the child.
- You were divorced less than or equal to 300 days when the child was born and the ex-husband is not the father of the child.

- A husband is the “presumed legal and natural father” unless the court sees evidence proving otherwise.

How will I know if Paternity was established?

If the child was born *before* July 1, 1999, you would have received notice that paternity was being established in Family Court.

If the child was born *after* July 1, 1999, paternity can be established either of the following ways:

- Family Court;
- The hospital when the child is born; or
- The Department of Health if both parents sign the “Voluntary Establishment of Paternity by Parents” form.

Evidence includes:

1. Separation: proof that the husband and wife were geographically separated during conception (e.g. military employment, or other records showing residence in different states/countries).
2. Sterility: proof that the husband was sterile or impotent at the time of the child’s conception.
3. Impossibility: proof by genetic testing that the husband could not be the father.

b. **What does paternity do?**

- The legal process of paternity establishes who the legal and natural father of the child is.

By establishing Paternity in Family Court, the following will also be court-ordered:

Child Support	Custody	Visitation	Child-Related Bills
A child support order must be issued within 90 days of a Paternity decision. (The father	1. Physical Custody refers to where the child lives. Parents can	If a parent is awarded sole physical custody, the Judge will order visitation for the non-	The Judge will also decide how much the father must pay for doctor and hospital

may owe for past child support)	have sole or joint physical custody.	custodial parent.	bills for the child.
Child Support is based on parents' incomes, expenses paid for healthcare, and nights spent with child. Min. is \$70/month per child.	2. Legal Custody refers to who makes legal decisions for the child. Parents can have sole or joint legal custody.	Visitation can be ordered as either: a. reasonable b. a set schedule c. supervised; or in extreme cases, d. no visitation.	These expenses may include birth expenses, medical insurance for the child, and/or childcare expenses.

c. Who can file for paternity?

- In Family Court, the following people have a legal right to request that paternity be established:
 - The natural mother or her personal representative;
 - Any man who believes he is the biological father of the child, or his personal representative;
 - The presumed father, or his personal representative;
 - Child Support Enforcement Agency (CSEA); or
 - The child or child's personal representative.

- If you establish paternity through the "Voluntary Establishment of Paternity" form, both parents must sign the form.

d. When can paternity be established?

- If the child is not the subject of an adoption proceeding, a paternity action can be filed anytime before the child turns 21 years old.
- **If the child is subject of an adoption**, the paternity action must be brought within 30 days from the child's birth, or anytime *before* the mother consents in writing to the adoption, whichever is later.
- Paternity is not necessary in order to legally adopt the child to adoptive parents.

Welfare & Paternity

If you receive TANF or Medicaid public assistance, the CSEA office may start a paternity action whether you want them to or not. Your benefits may be stopped if you do not cooperate. You must have good cause not to establish paternity if you are receiving TANF. If you cannot show good cause and you do not cooperate with the Department of Human Services (DHS) to establish paternity, your TANF benefits may be terminated. Cooperation means giving recent, complete, and accurate information about the natural father to your caseworker.

Examples of good cause:

- If the child was conceived as a result of rape or incest;
- If there is a possibility of physical or mental harm to the child and/or mother because their location may be revealed;
- If the mother is contemplating or currently receiving assistance for adoption; &
- If the DHS has previously made a good cause determination.

II. How to File for Paternity

➤ You can establish paternity in two ways:

1. Through **Family Court** by the Child Support Enforcement Agency (CSEA) or a private attorney; OR
2. By having both parents sign the **Voluntary Establishment of Paternity form** at the hospital or at the Department of Health. (NOTE: This will not work if the mother was married to another man when the child was born. You will need to get assistance from a private attorney or CSEA.)

a. Family Court Paternity Order

➤ You can apply with the Child Support Enforcement Agency (CSEA) if you are the mother or if you think that you are the father of the child. If CSEA cannot assist you, you should consult with a private attorney.

➤ **To get assistance from CSEA, you can call, write, or fax in your request.**

Statewide CSEA toll free phone number: 1-888-317-9081

Open: Monday to Friday 9:00am to 3:00pm

Except State Holidays

<p><u>O`AHU</u> 601 Kamokila Blvd., Suite 251 Kapolei, HI 96707 Ph: 692-8265 Fax: 692-7060</p>	<p><u>HAWAI`I</u> 88 Kanoelehua Ave., Suite 202 Hilo, HI 96720 Ph: 933-0644 Fax: 933-0300</p>
<p><u>MAUI/ MOLOKA`I & LANAI</u> 35 Lunalilo St., Suite 201 Wailuku, HI 96793 Ph: 243-5241 Fax: 243-5161</p>	<p><u>KAUA`I</u> 4180 Rice St., Suite 104 Lihu`e, HI 96766 Ph: 241-7112 Fax: 241-3816</p>

- The Family Support Division will file a “Complaint for Paternity” for the CSEA.
- They will serve the Complaint on all parties to appear in court for a combined pretrial and trial hearing.
- **The CSEA is required to serve the alleged father within 90 days.**
- The Court must issue a paternity order within 12 months of service of the Complaint upon the defendant(s).
- The amount of time it takes to establish paternity after all persons have been served depends on whether the action is *contested* or *uncontested*.

➤ **UNCONTESTED:** The parties can settle the matter out of court if everyone agrees. This will make it easier and quicker to establish paternity.

- **If the CSEA initiated the filing:** call the phone number for the Family Support Division in the top left hand corner of the “Complaint for Establishment of Paternity” and set up an appointment to settle the case. This settlement would be between the CSEA, the mother, and the father.
- **If the mother or presumed father initiated the filing:** both parties should fill out the “Stipulated Judgment of Paternity” which is a form that can be found at http://www.courts.state.hi.us/docs/form/oahu/Judgment_of_Paternity_Long_Form_1-30-15.pdf. They should sign this and bring it with them to their court hearing. Pro se litigants, or anyone other than the CSEA, cannot settle without going to court.

- **CONTESTED:** If the alleged father doesn't agree that he is the natural father, the action will go to a hearing.
 - **If the father plans to contest (disagree), he may call the number in the top left corner to set up an appointment for a genetic test at the CSEA offices.**
 - In addition, the alleged father must file an Answer within 20 days of receiving the Complaint.

The Genetic Test for Paternity

A Q-tip is rubbed inside the mouths of the mother, the possible father, and the child to get DNA samples from each. If the test shows that the man is the child's father, then the state may request reimbursement for the cost of the test, about \$120. If the test shows that the man is not the father of the child, he will be dismissed from the action and will have no legal obligations or rights to the child.

- **At the Hearing**
 - The CSEA is representing the interests of the child and is only interested in establishing paternity for child support purposes.
 - The CSEA will not help you with the issues of child custody or visitation, though those will be decided at the hearing. Either party may bring an attorney.
 - The hearing will establish paternity, custody, and visitation.
 - If the Defendant does not show up at this hearing, the judge may possibly grant a default judgment in favor of the Petitioner, as claimed in the petition.
- **Child Custody/ Visitation**
 - In deciding custody between parents, the court will look at what is in **the best interest of the child(ren)**.
 - Being on welfare or being poor should not be held against a parent in a custody decision.
 - The court will look at the following factors:

ABUSE
If there has been abuse of the child or a parent in front of the child;
SUBSTANCE ABUSE
If there has been drinking or drug use in front of the child or while driving; &
PRIMARY CARETAKER
Which parent or person has been the primary caretaker for the child?

➤ **Evidence**

- You may bring evidence to court to support your claims for custody, such as:
 - Photos/Police reports on abuse or driving records;
 - Any person(s) who can testify or provide a written statement that you have been the primary caretaker.

➤ **Child Support:** Is decided by a non-negotiable, court formula, which looks at the following factors:

1. Both parent's gross income;
 2. Health insurance expenses for child, paid by both parents;
 3. Monthly child care expenses, paid by custodial parent to allow them to work or attend vocational education or training; and
 4. The amount of time each parent spends with the child.
- The non-custodial parent will be required to pay a monthly minimum of **\$70 per child** if they have no income.
 - A child support order is usually ordered at the same time paternity is established; it must be issued within 90 days of a paternity decision.
 - If the mother has received or is currently receiving welfare for the child before the establishment of paternity, CSEA can seek repayment of that money from the father.

Social Studies

If the judge wants to investigate further, or if you want the court to be more involved, a social study can be ordered. Depending on the island that you live on, the social study can be a short meeting between the child's parents and the social worker, or it can be a long involved social study that lasts several months. The social worker will make a recommendation to the court about the custody arrangement. The court may ask you to pay part or all of the costs of the social study. **O`ahu residents** can request a mini social study, which lasts about 30 minutes. The court may also appoint a Guardian ad Litem. You may be required to pay some or all of the costs.

b. Voluntary Establishment of Paternity

- Beginning July 1, 1999, parents of a child are able to establish paternity by filling out the *Voluntary Establishment of Paternity* form. This form can be filled out either at the hospital if the unmarried mother and the father of a child are both present, OR this form can be filled out later at the Department of Health (DOH). **Once filed, this form will legally establish paternity. The father will acquire legal rights and responsibilities to the child.**

It may **not** be in your best interests to sign this form. Please call Legal Aid for more information.

Rescission of Voluntary Establishment

If you have signed the Voluntary Establishment of Paternity form, you have 60 days to rescind (cancel) the form. To rescind the form, go to the DOH and fill out a form called the Rescission of Voluntary Establishment of Paternity form. This form must be notarized. After 60 days, you can only get a rescission through the court. You will need assistance from a private attorney in this situation because it will be difficult to get a rescission after the 60 days.

- The CSEA will assist you with a child support order, through the administrative process, for child support, but not with custody or visitation. To establish custody and visitation in addition to child support, you will need to file a motion in Family Court. Child custody and visitation are court-ordered and can only be decided by filing legal papers in Family Court. The mother and established father share equal (50/50) rights to the child until a Family Court Child Custody Order directs otherwise.

III. Served with Court Papers: Family Court Summons and Petition for Paternity

- If you are served, meaning you are involved in a paternity action and have received official court papers, make sure you read all the papers carefully and meet all requested deadlines.
 - a. Show up in court.**
 - Verify the date, time, and place of your court hearing. Make sure you show up *early* and in the correct place.
 - If you are not sure when you need to be in court, call the attorney listed on the first page and ask for confirmation of the date.
 - If the other party has filed this action *pro se*, you may feel free to contact the Family Court to confirm the date/time of the hearing.
 - If you have been properly served and miss the hearing, the judge may enter a “default judgment” against you; this means that everything the Petitioner asked for in the Petition could be granted without your being present.
 - b. Answer**
 - File your “Answer” (response) within the court within 20 calendar days (weekends included) of receiving the Summons.

- If you disagree with anything in the Petition, it is especially important to turn in an Answer. An Answer should include the following:
 1. The names of the parties as written on the Petition;
 2. The Family Court Docket Number (“FC-P No_____”). It is located in the upper right hand corner of the petition; and
 3. An explanation to the Court of which details, line by line, exactly what you agree and disagree with in the Petition.

c. Serve the Petitioner

- You should then “serve” (give) a copy of your Answer to the Petitioner and the Family Support Division of the CSEA on your island.
- To do this, make 6 copies of your Answer and take the original and the copies to Family Court to be filed. The Court Clerk will keep the original and some copies for the Court. Mail one copy to the CSEA and one copy to the Petitioner.
- It is recommended that you serve the CSEA and Petitioner via certified mail so that its delivery is confirmed and can be used as proof in court.

d. If you contest paternity of the child:

- If you do not believe you are the father or are unsure, you must still answer the Complaint. In addition to your Answer, file a written motion requesting a genetic test within 30 days of being served the petition. If you are found not to be the father you will be dismissed from the action.
- If you are found to be the father, you may be charged for the cost of the genetic test.

IV. Definitions

❖ Natural father	the biological father of the child.
❖ Legal father	the father with legal rights and obligations to the child (i.e. custody and child support).
❖ Custodial parent	the parent with sole custody or with whom the child spends a majority of their time.
❖ Non-custodial parent	the parent who does not have sole physical custody or the parent with whom the child spends a minority of their time.
❖ Pro se	“for oneself”; a self-represented litigant.
❖ Contested	a legal dispute where two parties are not agreeing with each other.
❖ Uncontested	a legal matter where the two parties agree and further litigation is not necessary.
❖ Complaint for Establishment of Paternity	the legal document filed by CSEA which initiates a paternity action.
❖ Petition for Custody, Visitation, and Support after Voluntary Establishment of Paternity	the legal document filed by the mother, father, or any presumed father.
❖ Stipulated Judgment for Paternity	the legal document that both parties can file, sign, and bring to their court date if the paternity action is uncontested.

Legal Aid Society of Hawai'i
 924 Bethel Street
 Honolulu, HI 96813

www.legalaidhawaii.org

Legal Aid's Hotline:

O'ahu: 808.536.4302

Neighbor Islands: 1.800.499.4302

REMEMBER:

This brochure is meant to provide general information, and does not provide specific legal advice about your individual case. The law often changes. Each case is different.